

THE SUTTON LAW FIRM

October 14, 2016

VIA EMAIL & U.S. MAIL

Ms. Donna Rawls
Federal Election Commission
Office of Complaints & Examination & Legal Administrative
999 E Street, NW
Washington, DC 20463

OFFICE OF GENERAL
COUNSEL

RECEIVED
FEDERAL ELECTION
COMMISSION
2016 OCT 24 PM 2:36

RE: MUR 7141

Dear Ms. Rawls:

This letter responds to your request for information from our clients Wanda Beverly Hills LLC and Wanda Los Angeles Properties Co. LTD in connection with a complaint filed on September 22, 2016 by supporters of Measure HH – a measure appearing on the November 2016 ballot in the City of Beverly Hills, California. The complaint alleges that “Beverly Hills Residents and Businesses to Preserve Our City” (“Committee”), the political committee which Wanda Beverly Hills established to oppose Measure HH, received contributions from a “foreign national” in violation of 52 U.S.C. section 30121 (formerly 2 U.S.C. section 441e). However, the Committee has not received any contributions from a foreign national, and the FEC should therefore immediately dismiss the complaint.

As you may already know, supporters of Measure HH concurrently filed the same complaint with the California Fair Political Practices Commission (“FPPC”), the agency charged with enforcing California’s campaign laws, alleging that the Committee violated the prohibition under California law on contributions from foreign nationals to ballot measure committees. (Cal. Govt. Code section 85230.) In response to this complaint, the Committee provided information to the FPPC demonstrating that, contrary to the unsupported allegations in the complaint, a company based in the United States (Lakeshore East Parcel P, LLC) made a business decision to loan money to a United States subsidiary of a foreign company (Wanda Beverly Hills), and a permanent resident employed by Wanda Beverly Hills decided to contribute these funds to the Committee. (See attached response letter.) The FPPC agreed that this arrangement is legal, “found no evidence the contributor, Lakeshore East Parcel P, LCC, is a foreign principal” and closed its investigation of the matter on October 6, 2016. (See attached closure letter.)

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Not only is there no factual basis for the FEC to pursue this matter, but also we do not believe the FEC has jurisdiction over this matter. As the FEC's General Counsel and Commission concluded earlier this year in connection with MUR 6678, the federal prohibition on foreign national contributions in candidate elections does not apply to state and local ballot measure committees.

For these reasons, the FEC has no reason to take any further action regarding the complaint, and we request that this matter be closed.

Sincerely,



James R. Sutton

Enclosures
JSM/lc
#1019.08

1704443128



October 6, 2016

VIA E-MAIL ONLY

Ms. Teri Rindahl
Fair Political Practices Commission
428 J Street, Suite 600
Sacramento, CA 95814

RE: Beverly Hills Residents and Businesses to Preserve Our City

Dear Ms. Rindahl:

This letter responds to your request for information from our client, "Beverly Hills Residents and Businesses to Preserve Our City" ("Committee"), a committee established to oppose Measure HH on the November 2016 ballot in the City of Beverly Hills, in connection with a complaint filed by supporters of Measure HH. The September 22, 2016 complaint, and follow-up letter dated October 4, 2016, allege that the Committee received contributions from a "foreign national" in violation of Government Code section 85320. In short, the Committee has not received any contributions from a foreign national and the complaint should be immediately dismissed.

The complaint claims that the Wanda Group and its Chinese executives somehow "forced" Lakeshore East Parcel P, LLC ("Lakeshore") to make a contribution to the Committee because Wanda Group owns One Beverly Hills, a residential real estate project adjacent to the development proposed by Measure HH. The only support for this claim is the purely speculative comments that "it would appear that the project is being directed by," "there appears to be little chance," and it "defies logic" that the contribution would have been made without the participation of Wanda Group. The complaint – a political document distributed publicly with a press release – effectively asks the FPPC to go on a fishing expedition to find evidence of foreign involvement simply because Lakeshore has a business relationship with a foreign company. Such a fishing expedition is not necessary because the Committee fully vetted all relevant legal issues before accepting the contribution from Lakeshore, and compliance with section 85320 is fully confirmed in the documents attached to this letter.

As you know, section 85320 does not apply to a domestic subsidiary of a foreign corporation if the decision to make the contribution to the ballot measure committee is made by an officer, director or employee who is a United States citizens or lawfully admitted permanent resident. This is the exact situation presented here.

Loan from Lakeshore to Wanda Beverly Hills

As reported on the campaign report which the Committee filed last week, Lakeshore's contribution to the Committee was made with Wanda Beverly Hills Properties LLC ("Wanda Beverly Hills"), a United States subsidiary of Wanda Group and Delaware limited liability company

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developing the One Beverly Hills project, acting as the "intermediary." (See attached Schedule A.) Wanda Beverly Hills acted as the intermediary because Lakeshore did not make the contribution directly to the Committee, but rather loaned Wanda Beverly Hills \$1.2 million which was used to make the contribution. We confirmed this reporting advice with FPPC Technical Assistance,¹ and attached the loan agreement outlining this transaction.

The loan agreement between Lakeshore and Wanda Beverly Hills recognizes that Wanda Beverly Hills is owned by a Chinese company, but confirms that foreign funds were not used to make, and will not be used to repay, the loan. Specifically, the agreement states that the funds used to make the loan were "derived from legitimate revenues sources based in the United States" and that Wanda Beverly Hills will repay the loan with "revenue earned from the One Beverly Hills project, or other sources based in the United States, and not from Borrower's foreign parent company or any other foreign source." (See FEC Adv. Opn. to Roy Vitousek III, No. 1992-16 & FEC Adv. Opn. to Jonathan Simon, No. 2006-15 [political contributions must be made with funds derived from domestic sources of revenue].) This arrangement was necessary because Wanda Beverly Hills is not currently generating any revenue – the One Beverly Hills project is not yet built, but will generate significant revenue from domestic sources in the near future when it sells the residential units.

Lakeshore's decision to loan money to Wanda Beverly Hills was made by United States citizens. The loan is secured by future profits from the One Beverly Hills project and includes a four percent interest rate. In other words, Lakeshore made the business decision to enter into a low-risk investment and earn significant interest revenue from a secured loan to another company with which it has previously done business. All of Lakeshore's managers are United States citizens who have previously contributed to federal candidates.

The only "evidence" presented in the complaint and follow-up letter that foreign citizens made this decision are newspaper articles describing the management style of Wanda Group's CEO and his involvement with his company's projects in the United States. However, the loan agreement substantiates that Lakeshore's decision was made by United States citizens. (See FEC Adv. Opn. to Joseph Rieser, No. 2000-17 & Simon Adv. Opn, supra [foreign-owned subsidiaries may designate U.S. citizens or permanent residents to make contribution decisions].)

¹Because Lakeshore loaned the money to Wanda Beverly Hills for business rather than political reasons, we asked FPPC Technical Assistance whether Wanda Beverly Hills or Lakeshore should be disclosed as the source of the contribution. We were advised that Lakeshore should be disclosed as the source of the contribution and Wanda Beverly Hills should be disclosed as the intermediary, because Lakeshore was aware at the time that it loaned the money to Wanda Beverly Hills that the money would be used for the ballot measure campaign. (See attached 7/15/16 email.)

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Contribution From Wanda Beverly Hills to the Committee

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The subsequent decision to transfer the loan funds from Wanda Beverly Hills to the Committee was made by Rohan a'Beckett. The complaint correctly identifies Mr. a'Beckett as the Deputy General Manager of Wanda Beverly Hills and Principle Officer of the Committee, but it does not mention that he has been a permanent resident of the United States since 2010. We have attached a copy of his "green card" (which we ask that you keep confidential and not place in the public file or otherwise release publically). The Committee is being run by a "Steering Committee" of community members and business persons opposed to Measure HH, including Mr. a'Beckett. The Steering Committee adopted procedures about how it would operate (attached), which demonstrate that Mr. a'Beckett has decision-making authority for the Committee's receipts and expenditures.

In sum, a company based in the United States made a business decision to loan money to a United States subsidiary of a foreign company, and a permanent resident employed by the subsidiary decided to contribute the funds to a ballot measure committee. This arrangement complies with section 85320. Whereas the complaint is based solely on unsubstantiated innuendo, the attached documents clearly show that foreign nationals did not make the decisions to loan the money to Wanda Beverly Hills or contribute the funds to the Committee, and that Lakeshore has sufficient revenue from domestic sources to make the loan. Therefore, the FPPC has no reason to take any further action regarding the complaint.

If you need any additional information about the Committee, Lakeshore or Wanda Beverly Hills, or would like to talk to Mr. a'Beckett, please let us know.

Sincerely,



James R. Sutton

Enclosures
JSM/slf
#1019.08

Jonathan S. Mintzer

From: Matthew Christy <MChristy@fppc.ca.gov>
Sent: Friday, July 15, 2016 11:58 AM
To: Jonathan S. Mintzer
Cc: Advice
Subject: Your Question Regarding Section 84216

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. Mintzer:

Question: Legal Division has reviewed your question to the FPPC's advice line. Given the facts presented in your July 6, 2016 email below, would the Lender be deemed the source of the contribution?

Conclusion: Yes. Under your facts, where the lender knows the loan will be used for the ballot measure campaign, the loan would be for political purposes. Therefore, the Lender would be deemed the source of the contribution pursuant to Section 84216.

You have not asked questions concerning advertisement disclosure or committee sponsorship; if you have questions on these issues, we would be glad to assist, but would need to know the names of the entities involved. If you have further questions on this matter, please contact me.

Sincerely,

Matthew F. Christy
Commission Counsel
Fair Political Practices Commission
916.322.5789

This email advice is not a final decision of the Fair Political Practices Commission (the "Commission") and does not alter any legal right or liability, does not create an attorney/client relationship, nor does it provide immunity to the requestor under Government Code Section 83114. The Political Reform Act (Government Code Sections 81000 through 91014) and the Commission regulations (Sections 18110 through 18997) are on the Commission's website.

Formal written advice is offered by request and, in some cases, offers public officials a complete defense in any enforcement proceeding initiated by the Commission, and evidence of good faith conduct in any other civil or criminal proceeding. (Section 83114(b); Regulation 18329.)

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From: Jonathan S. Mintzer [mailto:jmintzer@campaignlawyers.com]
Sent: 05 July, 2016 2:01 PM
To: Advice
Subject: Follow-up Question for Glen Bailey

Glen -

Thanks for assisting with my campaign reporting question last Tuesday. Per my client's request, I hope you can provide written confirmation of the advice you provided.

The factual background for the question is as follows:

A newly formed company ("Developer") owns a vacant parcel of land and hopes to build a large mixed-use project. As a new company with no income, Developer has received loans and investments from other companies to pay its architects, lawyers, consultants, etc. Before Developer can start building, local law requires that the project be approved by the voters. Therefore, Developer will be required to establish a political committee (which it will sponsor) to support the corresponding ballot measure.

In order to finance the committee, Developer will seek a loan from another company ("Lender"). Specifically, Lender will loan Developer \$1 million, the loan will be deposited in Developer's bank account, and then Developer will later use the loan funds to make contributions to its sponsored political committee. The loan will include a reasonable interest rate and be secured by future income from the project or the sale of the land (both of which far exceed \$1 million). Lender knows the loan will be used for the ballot measure campaign, but has no financial/business interest in the ballot measure, and will have no discretion on how Developer spends the funds.

During our phone call, you concluded that Developer will be deemed the source of the contribution. You determined that Lender would not be the source of the contribution because it will receive "full and adequate consideration" from Developer (the interest from the loan), and because Lender did not make the loan for a "political purpose." (Cal. Govt. Code sections 82015 & 84216.) You also relied on the fact that Lender does not have any discretion on how the loan will be spent, Lender does not have an interest in the ballot measure, and Developer's name will appear on the actual contribution check prior to the ballot measure committee.

Thank you for confirming this advice. Please let me know if you have any questions.

Jonathan Mintzer
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, California 94108
PH: 415.732.7700 (firm)
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STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329

October 6, 2016

Gary Winuk
Kaufman Legal Group
o/b/o Tom Walsh
UNITE HERE Local 11
Via Email: gwinuk@kaufmanlegalgroup.com

Re: Sworn Complaint Against Beverly Hills Residents and Businesses to Preserve Our City, No on HH, Sponsored by Wanda Beverly Hills Properties, LLC and Athens BH Development, LLC with Major Funding from Lakeshore East Parcel P, LLC

Dear Mr. Winuk:

This letter is in response to your sworn complaint. The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act (the "Act") found in Government Code Section 81000, *et seq.* You allege the Beverly Hills Residents and Businesses to Preserve Our City, No on HH, Sponsored by Wanda Beverly Hills Properties, LLC and Athens BH Development, LLC with Major Funding from Lakeshore East Parcel P, LLC committee ("No on HH") violated the Act by accepting a contribution from a foreign principal, The Wanda Group, a Chinese company.

In this case, we found no evidence the contributor, Lakeshore East Parcel P, LLC ("Lakeshore"), is a foreign principal. Evidence provided to the Enforcement Division indicates that Lakeshore loaned \$1.2 million to Wanda Beverly Hills Properties, LLC in order for Wanda Beverly Hills Properties, LLC to make a contribution to No on HH. The No on HH committee received advice from the Fair Political Practices Commission's Legal Division regarding the proper reporting and disclosure of this contribution and were instructed to report Lakeshore as the contributor and Wanda Beverly Hills Properties, LLC as the intermediary. Your complaint did not provide evidence to substantiate the allegation that a foreign principal was the source of the money loaned by Lakeshore to Wanda Beverly Hills Properties, LLC. Therefore, the Enforcement Division will not open a case on this matter.

Thank you for taking the time to bring this matter to our attention. If you have any questions regarding this decision, please contact Teri Rindahl at (916) 327-2018 or trindahl@fppc.ca.gov.

Sincerely,

Galena West
Chief, Enforcement Division

GW/tr

cc: Sutton Law Firm o/b/o Beverly Hills Residents and Businesses to Preserve Our City, No on HH

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